

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

OPINION, MEMORANDUM AND ORDER

This closed matter is before the Court on multiple filings from self-represented plaintiff Preston W. Simpson. On April 22, 2021, plaintiff filed motions to amend his complaint and for appointment of counsel. ECF Nos. 14-15. On May 3, 2021, plaintiff filed a motion requesting that the Court not rule his two pending motions until after May 5, 2021, because at that time he would be filing a motion to reopen the case. ECF No. 16. Finally, on May 14, 2021, the Court received a letter from plaintiff (dated May 8, 2021), stating that there had been a miscommunication with his attorney and that this case is “not yet ready to be reopened.” ECF No. 17.

The Court closed this case on September 29, 2020, pending final disposition of the state court criminal proceedings – including appellate and post-conviction proceedings – against plaintiff in case *State v. Simpson*, No. 15SD-CR00840-01 (35th Jud. Cir. 2015). ECF No. 10. Plaintiff now seeks leave of court to file an Amended Complaint in this matter which “contain[s] a new defendant/(s) and claim/(s) that relate back to the time [the original Complaint] was filed.” ECF No. 14 at 1. Plaintiff also seeks appointment of counsel in this matter. ECF No. 15. The Court has waited until after May 5th to rule these motions, as requested by plaintiff. ECF No. 16.

This 42 U.S.C. § 1983 case was stayed and administratively closed because plaintiff's § 1983 claims are based on the same facts and circumstances giving rise to plaintiff's pending criminal charges, and the Court wanted to avoid making any rulings related to a pending state court criminal matter. ECF No. 9 at 7-8 (citing *Wallace v. Kato*, 549 U.S. 384, 393-94 (2007)). The Court directed plaintiff to notify the Court in writing when there was a final disposition of the criminal charges pending against him in state court. *Id.* at 8. Plaintiff makes no mention of any resolution of his state court criminal charges in his motions currently before this Court.

Independent review of plaintiff's criminal case on Missouri Case.net, the State of Missouri's online docketing system, shows that plaintiff's criminal case is currently set for a disposition hearing on June 16, 2021. *State v. Simpson*, No. 15SD-CR00840-01 (35th Jud. Cir. 2015). The case was scheduled for a hearing on May 5th but the hearing was rescheduled for June 16th. The case has been removed from its trial docket setting. In addition, plaintiff has another criminal case pending in the same state court – involving charges of domestic assault, unlawful possession of a firearm, unlawful use of a weapon, and resisting arrest – which is also set for a hearing on June 16. *State v. Simpson*, No. 20SD-CR00403-01 (35th Jud. Cir. filed Apr. 30, 2020).

It appears that plaintiff believed his state court criminal matter would be resolved on May 5th but the hearing has since been rescheduled for June. There is no indication in the record that plaintiff's criminal charges have been resolved in state court and plaintiff even admits that this case is "not yet ready to be reopened." *See* ECF No. 17 at 1. As such, there is no reason for this Court to lift the stay in this matter and reopen the case. Plaintiff's motions will be denied.

Once plaintiff's pending criminal charges are complete in state court, plaintiff can file a motion with this Court. The Court reminds plaintiff that all appellate and post-conviction proceedings should be complete in state court before he seeks to reopen this matter. Once the case

is reopened, plaintiff can seek amendment of his pleadings and /or appointment of counsel, as necessary and appropriate at that time.

Accordingly,

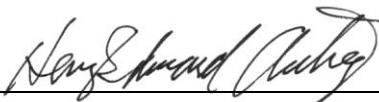
IT IS HEREBY ORDERED that plaintiff's motion for leave to amend his complaint [ECF No. 14] is **DENIED** without prejudice.

IT IS FURTHER ORDERED that plaintiff's motion for appointment of counsel [ECF No. 15] is **DENIED** without prejudice.

IT IS FURTHER ORDERED that plaintiff's motion to set aside ruling the motion to appoint counsel and motion to amend until after May 5th [ECF No. 16] is **DENIED as moot**.

IT IS FINALLY ORDERED that, if and when plaintiff seeks to reopen this case, he shall notify the Court in writing concerning the final disposition of the criminal charges pending against him in *State v. Simpson*, No. 15SD-CR00840-01 (35th Jud. Cir. 2015).

Dated this 17th day of May, 2021.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE